

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

CR 04-64

Plaintiff,

OPINION AND ORDER

v.

JUAN DAVID MUÑOZ-CRUZ,

Defendant.

KARIN J. IMMERMUT  
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Attorneys for Plaintiff

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MARSH, Judge.

1 - OPINION AND ORDER

On February 16, 2006, the United States Court of Appeals for the Ninth Circuit remanded this case for a determination under United States v. Ameline, 409 F.3d 1073 (9<sup>th</sup> Cir. 2005)(en banc), whether I would have imposed a materially different sentence had the Sentencing Guidelines been advisory at the time of sentencing. See also United States v. Moreno-Hernandez, 419 F.3d 906 (9<sup>th</sup> Cir. 2005).

On remand, I have carefully considered the record in light of the now-advisory Sentencing Guidelines and the factors set forth in 18 U.S.C. § 3553(a). I remain satisfied that a sentence of 57 months was appropriate. I find that I would not have exercised discretion to impose a materially different sentence if I had been free to do so when I first sentenced defendant. Accordingly, I find it is not necessary to conduct further sentencing proceedings or to amend the original Judgment of Conviction in any manner.

IT IS SO ORDERED.

DATED this 19 day of April, 2006.

/s/ Malcolm F. Marsh  
Malcolm F. Marsh  
United States District Judge